IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1069 OF 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GOKALDASBHAI MAGANBHAI THAKKAR - Appellant(s)
Versus
TULSIDAS SHAMJIBHAI & ORS. - Respondent(s)

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Appearance :
Ms. Tejal Shah for Ms. Bhavika H. Kotecha for Appellant(s).
None for Respondent Nos. 1 - 3, 5.
Ms. Archana Acharya for Respondent(s) : 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/07/2007

ORAL JUDGMENT

The parties are heard.

2. The subsequent unregistered owner of the truck bearing Registration No. GTB-5309, being aggrieved by the award dated 20th February, 1982 passed by the learned Member, Motor Accident Claims Tribunal (Auxiliary), Rajkot in Claim Case No.131 of 1980, is before this Court with a submission that the learned Tribunal below should have held that the Insurance Company was answerable to the claim made by the claimants and that the registered owner would continue to be liable.

3. The short facts necessary for disposal of the First Appeal are that some labourers were travelling in the above referred motor truck between Morbi and Rajkot on 16th August, 1979. The truck was driven by Balubhai Haribhai and was alleged to be owned by Satarbhai Karimbhai and was insured with the Oriental Fire & General Insurance Company. It has come on the records that before the incident took place, the said Satarbhai Karimbhai had transferred the ownership of the truck in favour of the present appellant, Gokaldas Maganbhai. The truck on the fateful day, unfortunately, met with an accident, had gone turtle, as a result of which as many as four persons were crushed to death and some inmates also received simple and grievous injuries. After recording further evidence of the parties, the learned Tribunal below held that as the truck was already transferred by Satarbhai in favour of Gokaldas, but, no intimation was given to the Insurance Company that the ownership of truck had already been transferred and as there was no transfer of the

policy, which was a personal contract between the first owner and the Insurance Company, the Insurance Company would not be liable. It passed the award of Rs.67,000/- against original respondent Nos.1, 2, 3 and 6, that is, Balubhai Haribhai - the driver, Satarbhai Karimbhai - the registered owner and Gokaldas, the appellant (subsequent owner).

Gokaldas being aggrieved by the award and exoneration of the Insurance Company from any liability is before this Court.

4. Ms. Shah, learned Counsel for the appellant, has made two fold submissions. It is submitted that irrespective of intimation to the Insurance Company, the policy would stand transferred and secondly, that as the second owner has not been registered as the owner under the provisions of the Motor Vehicles Act, the first registered owner would continue to be liable.

5. Ms. Acharya, learned Counsel for the Insurance Company, placing reliance upon a judgement of the Apex Court in the matter of ***New India Assurance Co. Ltd. vs. Vedwati & Ors.***, [***AIR 2007 SC 1334***], submits that the provisions of the Act do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in the goods carriage and the insured would have no liability therefor. It is submitted that as evidence brought on the record

proves that the deceased was travelling as a passenger in the truck/goods vehicle on payment of hire or reward, the Insurance Company is not at all liable.

6. So far as the liability of the Insurance Company is concerned, this Court must immediately agree with the submission of Ms. Acharya in view of the said judgement of the Supreme Court. Even otherwise, in the matter of ***New India Assurance Company vs. Satpal Singh & Ors***., [***2000 (1) SCC 237***], the Supreme Court had observed that the liability of the Insurance Company may extend in case of a passenger, but, later on this view was overruled and the later view had been consistently confirmed by the Supreme Court and in the latest judgement in the matter of ***New India Oriental Assurance Company Ltd. vs. Vedwati*** (*supra*), the Supreme Court had made the same observations.

In view of the said judgements of the Supreme Court, it must be held that the Insurance Company is not answerable to the claim made by the claimants of the deceased, who were travelling in a goods vehicle as a passenger.

7. So far as the joint and several liability of the present appellant is concerned, it has come on the record that for all practical

purposes, the appellant is exercising the authority and rights of an owner. The truck, being movable property, its ownership would pass in favour of the purchaser on payment of the consideration and on transfer/handing over of the possession of the movable. True it is, that the ownership of such a vehicle is required to be registered, but, non-registration of the vehicle would not provide any solace to the subsequent owner, nor would he be allowed to say that though he exercises the rights of the owner, but, the ownership vests in favour of the erstwhile owner. Once the property is transferred and the purchaser holds the effective control, enjoys the possession and is operating the vehicle as and where he wants, then, for all practical purposes, he becomes the owner. The learned Tribunal below was not unjustified in holding the appellant liable.

8. For the reasons aforesaid, the appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**